IDAHO FALLS, TUESDAY, APRIL 1, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DEBRA K. CHAVEZ,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	**Docket No. 33727**
WILLIAM J. BARRUS, FIRST AMERICAN TITLE, CO., and BAKER & HARRIS, Attorneys at Law,	)	
	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bingham County, Honorable Jon J. Shindurling, District Judge.

Curtis N. Holmes, Pocatello, for appellant.

Baker & Harris, Blackfoot, for respondents William Barrus and Baker & Harris.

Holden, Kidwell, Hahn & Crapo, Idaho Falls, for respondent First American Title Co.

This action arises from a dispute over property settlement in a divorce. Appellant Debra K. Chavez (Chavez), appeals from an order of the district court granting summary judgment to Respondents William J. Barrus (Barrus), Chavez's former husband, Baker & Harris, his attorneys in the divorce action, and First American Title Company (First American) (collectively Respondents). The case turns on the character of the property interest Chavez was allocated in the marital home.

The Decree of Divorce incorporated by reference the parties' Parenting and Property Settlement Agreement (Agreement), which set forth the distribution of the parties' community property and debts. The Agreement provided that Barrus would receive the house subject to an obligation to pay Chavez $21,500 from the equity in the house within three years. The Decree also obligated Chavez to pay Barrus $2,000 to offset the community debts allocated to him.

Barrus filed a Motion for Judgment, seeking a judgment against Chavez for $3,046.38 in unpaid debts she was obligated to pay under the Agreement. The magistrate court entered a Judgment against Chavez for $2,000. Barrus, through his attorneys Baker & Harris, contacted the Bingham County Sheriff regarding executing on the judgment. The Sheriff followed the proper statutory notice procedures for executing against personal property and mailed Chavez a Writ of Execution and debtor's packet. The Sheriff did not personally serve Chavez. A sheriff's sale was held whereat Barrus, as the highest bidder, purchased for $50, "All right to receive monies

from William J. Barrus as set forth in the Decree of Divorce between William J. Barrus and Debra K. Barrus."

Barrus then granted a deed of trust to Baker & Harris, secured by a promissory note on the house, to secure payment for legal fees Barrus incurred in the divorce. Subsequently, Barrus decided to refinance the mortgage on the house. After the Decree of Divorce had been recorded and Barrus had provided First American with an affidavit stating that the debt to Chavez had been extinguished by the sheriff's sale, First American, at the request of Coventry Mortgage, issued a commitment for title insurance on the house which listed Barrus as the sole owner of the house and did not provide an exception for the debt owed to Chavez. After accepting First American's title commitments, Coventry Mortgage closed a refinancing loan on behalf of Barrus. With the proceeds of the refinancing, Barrus satisfied the promissory note to Baker & Harris and extinguished the deed of trust on the house.

It was not until Chavez attempted to initiate a cause of action for contempt, when Barrus failed to pay Chavez for her interest in the property which became due in July, 2005, three years after the Decree of Divorce had been finalized, that she finally discovered the execution on the judgment through the sheriff's sale. According to Chavez, she did not receive the Writ of Execution or the debtor's packet. Chavez contends that Barrus waited before pursuing his execution of judgment until he was fully aware that Chavez would be out of State so as to ensure that she would not be made aware of the execution nor receive any prior notice thereof. Following a hearing before Judge Boyer, Chavez was told that the contempt action would not be ruled on until she filed a quiet title action.

On June 14, 2006 Chavez filed a Complaint to Quiet Title at the district court before Judge Shindurling, seeking a decree quieting title to Chavez in the house. Chavez contended that she should have received proceeds from the refinancing of the interest in the community real property. Chavez also sought costs to revise and record the deed and other documents required to quiet title, reimbursement for revenue wrongfully received by Barrus, Baker & Harris, and First American following the mortgaging and refinancing, and attorney fees.

The parties filed cross motions for summary judgment. The district court concluded that the decree of divorce changed Chavez's real property interest in the house into a personal property interest in the $21,500 debt owed by Barrus to her on the equity. The district court held that the execution correctly followed the statutory procedures for executing against personal property and thus extinguished any interest Chavez had in the house. It declined to vacate the sheriff's sale for reasons of equity. The court dismissed Chavez's quiet title action since it determined she had no real property interest in the house. Summary judgment was granted in favor of Barrus and Baker & Harris. The court also held that First American owed no duty to Chavez and granted summary judgment in favor of First American. The court declined to address Chavez's assertions that First American committed fraud.

Chavez appealed the district court's grant of summary judgment to Respondents and reserved the issue of attorney fees and costs pending the district court's decision on

that matter. Subsequently, the district court issued a separate decision awarding attorney fees and costs to Respondents. On appeal, this Court must consider whether the district court was correct in determining that Chavez's interest in the house was changed from a real into a personal property right by the Decree of Divorce; whether the sheriff's sale subsequently extinguished that interest; whether First American owed any duty to Chavez in issuing the title commitment; whether Chavez was entitled to equitable relief from the sheriff's sale, and; whether an award of attorney fees and costs is appropriate.

IDAHO FALLS, TUESDAY, APRIL 1, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DONALD HARGER and FRANCINE HARGER, **Plaintiffs-Respondents-Cross Appellants,** **v.** **TETON SPRINGS GOLF AND CASTING, LLC,** **Defendant-Appellant-Cross Respondent.** **and** **V & R INVESTMENTS, LLC; WILLIAM REID, and ANTHONY VEST,** **Defendants.**	**Docket No. 33532**

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Teton County. Hon. Brent J. Moss, District Judge.

Moffatt Thomas Barrett Rock & Fields, Chtd., Idaho Falls, for Plaintiffs-Respondents-Cross Appellants.

Moulton Law Office, Driggs, for Defendant-Appellant-Cross Respondent.

Donald and Francine Harger (Hargers) entered into a contract with Teton Springs Golf and Casting, LLC (Teton Springs) to buy a parcel of property and model cabin for approximately $650,000. Teton Springs built the cabin and secured a certificate of occupancy, but ending up selling the cabin to another purchaser after disputes arose regarding the terms of the contract with the Hargers. The Hargers brought an action in the district court that resulted in a jury verdict awarding them $178,000 in damages.

The Hargers filed a post-trial motion requesting an increase in the amount of the jury's award, or alternatively a new trial. The district court granted the Hargers' motion for a new trial. On appeal, Teton Springs seeks to have the district court's order for a new trial reversed and the $178,000 award of damages reinstated. The Hargers seek to have the district court's order for a new trial affirmed, or alternatively to have the order modified to either increase the amount of the jury's award or limit the new trial to the issue of damages.

Teton Springs argues on appeal that the district court improperly applied the test to determine whether a party is entitled to a new trial. It further argues that the new trial order should be redacted because there is no disparity between the judgment of the district court and the jury that would permit a new trial.

The Hargers argue that the district court did not err in granting them a new trial because the requirements for granting a new trial have been met in this case. They also argue that the district court abused its discretion by not limiting the new trial to the issue of damages only.

IDAHO FALLS, TUESDAY, APRIL 1, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DEON and ETHEL ANDERSON, husband and wife, dba D&E UPHOLSTERY,	)	
Plaintiffs-Appellants,	)	**Docket No. 34015**
v.	)	
REX HAYES FAMILY TRUST, REX HAYES, Trustee, and REX AND DEVONNE HAYES LIMITED PARTNERSHIP,	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Caribou County. Hon. Don L. Harding, District Judge.

Nielson Law Office, Pocatello, for appellants.

S. Criss James, Soda Springs, for respondents.

This case involves a boundary dispute between Rex Hayes, the trustee for the Rex Hayes Family Trust, and the married couple Deon and Ethel Anderson. The property in dispute is located in Soda Springs, and includes a chain link fence erected in 1989 by Donald and Karen Tate, the Andersons' immediate predecessors on the property. The Andersons assert that the fence serves as the correct boundary line between their property and the Hayes'. Therefore, they appeal the district court's decision not to quiet title to the property in their favor.

POCATELLO, WEDNESDAY, APRIL 2, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

AMERITEL INNS, INC.,	)	
	)	
Plaintiff-Appellant-Cross-Respondent,	)	
	)	
v.	)	
	)	**Docket No. 33448**
THE POCATELLO-CHUBBUCK AUDITORIUM OR COMMUNITY CENTER DISTRICT, dba THE POCATELLO CONVENTION & VISITORS BUREAU,	)	
	)	
Defendant-Respondent-Cross Appellant.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County, Honorable Peter D. McDermott, District Judge.

Racine, Olson, Nye, Budge & Bailey, Boise, for appellant/cross-respondent.

Lowell N. Hawkes, Pocatello, for respondent/cross-appellant.

This appeal arises from a declaratory judgment action concerning the spending limits of Respondent Pocatello-Chubbuck Auditorium District (the District). AmeriTel Inns, Inc. (Ameritel) appeals the district court's grant of summary judgment in favor of the District.

The District was organized in 1998 pursuant to I.C. § 67-4901 *et. seq.* The District receives revenue from two sources: annual grants from the Idaho Tourism Commission, and a room tax collected by local motels and hotels. The District often entices event sponsors to bring their events to the Pocatello area by paying "seed money" to event sponsors. The District dedicates about one half of all its tax revenues to providing event sponsors with "seed money." The District does not own or operate any building, facility, auditorium, convention center, sports arena, or facility of similar nature.

On October 11, 2005, Ameritel filed a complaint against the District seeking declaratory judgment that the District's expenditures violated the District's statutory authority and the Idaho State Constitution. On April 24, 2006, Ameritel filed its motion for summary judgment and on May 8, 2006, the District filed its cross-motion for summary judgment. On August 3, 2006, the district court granted summary judgment in favor of the District.

Ameritel now appeals and argues that an auditorium district can only spend tax revenues to "market" auditoriums it owns or leases and that as a governmental entity, it cannot constitutionally donate tax revenues to private entities or lend its tax revenues and credit to private corporations.

POCATELLO, WEDNESDAY, APRIL 2, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

KYLE ATHAY, **Plaintiff-Appellant,** **v.** **DALE M. STACEY, individually and in his official capacity as Sheriff of Rich County, Utah; RICH COUNTY, UTAH, a political subdivision of the State of Utah; GREGG ATHAY, individually and in his official capacity as Captain of the Sheriff's Department of Bear Lake County, Idaho; BEAR LAKE COUNTY, IDAHO, a political subdivision of the State of Idaho,** **Defendants-Respondents.**	)	**Docket No. 33785**

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bear Lake County. Hon. Don L. Harding, District Judge.

Craig R. Jorgensen, Pocatello, for Plaintiff-Appellant.

Stirba & Associates, Salt Lake City, and E. W. Pike & Associates, Idaho Falls, for Defendants-Respondents Dale M. Stacey and Rich County, Utah.

Naylor & Hales, Boise, for Defendants-Respondents Gregg Athay and Bear Lake County, Idaho.

Kyle and Melissa Athay (Athays) appeal the district court's grant of summary judgment, dismissing the Athays' complaint against Utah county Sheriff Dale M. Stacey (Sheriff Stacey); Rich County, Utah (Rich County); Idaho county Deputy Gregg Athay (Deputy Athay); and Bear Lake County, Idaho (Bear Lake County).

On April 19, 2002, the Athays filed suit against Sheriff Stacey, Rich County, Deputy Athay, and Bear Lake County, among others, after Kyle Athay was injured in an automobile collision caused by a motorist involved in a high-speed chase with sheriffs and deputies that passed through three states. The district court dismissed the complaint after granting the defendants' motions for summary judgment, and the Athays timely appealed.

On November 22, 2005, this Court affirmed in part and vacated in part the district court's decision, holding, among other things, that genuine issues of material fact existed as to whether Sheriff Stacey's conduct rose to the level of reckless disregard, and genuine issues of material fact existed as to whether to impute liability to Deputy Athay and Bear Lake County on the basis of Sheriff Stacey's conduct.

On June 15, 2006, on remand, the Athays moved for partial summary judgment. Deputy Athay and Bear Lake County also filed a motion for summary judgment, to which Sheriff Stacey and Rich County joined in. The district court denied the Athays' motion for partial summary judgment but granted the defendants' motion and dismissed the suit on the following grounds: 1) Deputy Athay was not a proper party to the action because the Athays did not meet the bond requirement of I.C. § 6-610, and they did not provide proper notice to him under I.C. § 6-906; 2) Sheriff Stacey was not a proper party to the action because the Athays did not meet the bond requirement of I.C. § 6-906; 3) the Athays' tort claim against Rich County is barred because they did not provide timely notice pursuant to I.C. § 6-906; and 4) the Athays' notice to Bear Lake County was insufficient because it did not put the county on notice that it could be liable for Sheriff Stacey's conduct.

The Athays timely appealed.

POCATELLO, WEDNESDAY, APRIL 2, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MARILOU N. WINN,	)	
Plaintiff-Appellant,	)	
v.	)	**Docket No. 34142**
WAYNE CAMPBELL dba HOME HOTEL AND MOTEL,	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. N. Randy Smith, District Judge.

Nick L. Nielson, Pocatello, for appellant.

Douglas J. Balfour, Chartered, Pocatello, for respondent.

Marilou Winn was visiting a hotel in Lava Hot Springs when she slipped and fell on an icy exterior staircase. Nearly two years later, she filed suit against Wayne Campbell, dba Home Hotel and Motel. Six months later, she served Campbell with the summons and complaint. Campbell filed a motion for summary judgment against Winn. The motion contended that Campbell was not personally liable to Winn because the hotel at which she stayed was actually the Tumbling Waters Motel, which was operated by Campbell, Inc., a corporate entity. Winn then filed a motion to amend her complaint in order to name the correct party as defendant. The district court granted the motion for summary judgment. Further, the court denied Winn's motion to amend, holding that the amendment could not relate back to the original filing date because Campbell, Inc. did not receive notice of the suit within the two-year statute of limitations. Winn appealed to this Court.

POCATELLO, THURSDAY, APRIL 3, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

M. DALE BECKSTEAD and GAYLE BECKSTEAD, husband and wife,	)	
Plaintiffs-Counterdefendants- Respondents,	)	
v.	)	**Docket No. 33473**
BLAINE PRICE, JOANN PRICE, LAZY E., LLC, an Idaho limited liability company, and JOHN DOES 1-10,	)	
Defendants-Counterclaimants-Appellants.	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Oneida County. Hon. Don L. Harding, District Judge.

Lowell N. Hawkes, Chtd., Pocatello, for appellants.

Maguire & Kress, Pocatello, for respondents.

Appellants Blain Price, JoAnn Price, Lazy E., LLC, and John Does 1-10 (collectively Price) appeal a district court order which grants a prescriptive easement over their land in favor of Respondents M. Dale and Gayle Beckstead. On appeal Price raises several issues including that the district court erroneously concluded the Becksteads have a prescriptive easement, that the determination of the scope of the easement was erroneous, and that Price's right to due process was violated.

POCATELLO, THURSDAY, APRIL 3, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

JESUS HERRERA,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 34085**
	)	
PEDRO ESTAY, ROCK CREEK DEVELOPMENT, LLC,	)	
	)	
	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Teton County, Honorable Brent J. Moss, District Judge.

Jenna V. Mandraccia, Oro Valley, Arizona, for appellant.

Wright, Wright & Johnson, Idaho Falls, for respondent Rock Creek Development.

Hess, Carlman & D'Amours, Jackson, Wyoming, for respondent Pedro Estay.

This appeal arises from a negligence action brought by Appellant Jesus Herrera. Herrera appeals the district court's grant of summary judgment and dismissal of his suit against Rock Creek Development (Rock Creek) and the district court's dismissal of his suit against Respondent Pedro Estay (Pedro) for lack of personal jurisdiction.

Peter Estay (Peter) hired Rock Creek to serve as the general contractor for the house on Pedro's Estay's property. Peter Estay is Pedro Estay's son. Peter oversaw the construction for Rock Creek and hired FrameIt as an independent contractor to frame the house. Herrera was an employee of FrameIt.

Herrera and another FrameIt employee constructed scaffolding made from a plank supported by two-by-sixes and two-by-fours in order to work on the upper portion of the house. Employees of another independent contractor removed a support beam on the scaffolding in order to lay felt on the roof. The beam was never replaced and on December 16, 2002, the scaffolding collapsed and Herrera was injured when he fell to the ground. FrameIt was not carrying worker's compensation insurance at the time of Herrera's accident. Consequently, Herrera brought the instant action against Rock Creek and Pedro. On August 16, 2006, Rock Creek filed a motion for summary judgment arguing that it did not owe a duty of care to Herrera because he was the employee of an independent contractor. On February 20, 2007, the district court granted Rock Creek's motion for summary judgment and dismissed the case against Rock Creek. Herrera now appeals and argues that Rock Creek owed him a duty of ordinary care, and duties of care under the Restatement (Second) of Torts §§ 416 and 427.

Herrera was unable to personally serve Pedro with a Summons and Complaint and was forced to attempt service by publication. The Summons was published in the *Teton Valley News*, a weekly newspaper printed and published in Driggs, Idaho, for four consecutive weeks starting on May 19, 2007. Herrera did not use the form of the summons for publication provided in I.R.C.P. 4(b)(3). Instead, he used the form of the summons for other civil proceedings provided in I.R.C.P. 4(b)(2).

Pedro made a special appearance on November 22, 2006 and challenged the sufficiency of process and the personal jurisdiction of the district court. Pedro filed a motion to dismiss pursuant to I.R.C.P. 12(b)(2), (4), and (5). On February 28, 2007, the district court granted Pedro's motion to dismiss for lack of personal jurisdiction. Herrera now appeals and argues that he substantially complied with the service of process requirements in the Idaho Rules of Civil Procedure.

POCATELLO, THURSDAY, APRIL 3, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

VICKIE HANSEN,	)	
Plaintiff-Appellant,	)	
v.	)	**Docket No. 34277**
CITY OF POCATELLO,	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Gordon Law Firm, Inc., Idaho Falls, for appellant.

Anderson Nelson Hall Smith, P.A., Idaho Falls, for respondent.

Vickie Hansen was walking along a public sidewalk when she stepped on an unsecured water meter lid. The cover flipped open, and Hansen fell into the hole and injured herself. Hansen filed a complaint against the City of Pocatello ("City"), arguing that a City employee negligently failed to secure the cover when he checked the water meter nine days before her accident. The City moved for summary judgment, stating that Hansen failed to allege facts sufficient to support a cause of action for negligence. Hansen failed to submit her opposing documents in a timely manner. The district court granted the motion for summary judgment, and Hansen appealed.

BOISE, MONDAY, APRIL 7, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BECO CONSTRUCTION COMPANY, INC.,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33378**
	)	
J-U-B ENGINEERS, INC.,	)	
	)	
Defendant-Respondent.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. Peter D. McDermott, District Judge.

McGrath Meacham Smith, PLLC, Idaho Falls, for appellant.

Capitol Law Group, PLLC, Gooding, for respondent.

In November 2003, the Pocatello Development Authority hired JUB Engineers, Inc. to serve as the design professional on a downtown development project in Pocatello, known as the Pocatello Downtown Reinvestment Project. Thereafter, the City of Pocatello contracted with BECO Construction Co., Inc. to serve as the general contractor for the project. BECO failed to complete the project in the time outlined in its contract, thereby incurring substantial liquidated damages. BECO sued the City and JUB in March 2005, claiming their actions caused delay in BECO's ability to complete the project within the designated timeframe. BECO claimed breach of contract and negligence against both defendants and claimed intentional interference with contract against JUB. Shortly after, the City paid BECO and was dismissed from the lawsuit. BECO withdrew its breach of contract claim against JUB. JUB moved for summary judgment on the negligence and intentional interference with contract claims. Initially, the district court granted summary judgment on the negligence claim but denied it on the intentional interference claim. JUB again moved for summary judgment on the intentional interference claim, which the district court then granted. BECO appealed dismissal of the intentional interference claim to this Court.

BOISE, MONDAY, APRIL 7, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TOM HALE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33995**
	)	
REMAX REALTY, KEN SWISHER, and ELIZABETH R. LOVERIDGE,	)	
	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Thomas F. Hale, Shelley, appellant pro se.

Maguire & Kress, P.C., Pocatello, for respondents.

On October 14, 2005, Tom Hale filed for bankruptcy in the United States Bankruptcy Court, District of Utah. Hale owned two parcels of real property located in Pocatello. The bankruptcy court appointed Elizabeth Loveridge as trustee over Hale's estate. It also appointed Ken Swisher to act as the listing agent for the two Pocatello properties.

On December 8, 2006, Hale filed a complaint against Loveridge and Swisher in Idaho district court for making defamatory statements in connection with the sale of the properties. The district court dismissed Hale's complaint without prejudice because Hale failed to obtain leave of the bankruptcy court before filing his complaint.

Hale brings this appeal arguing that the district court erred in dismissing his complaint because of lack of subject matter jurisdiction. Hale argues that his defamation action was a "non-core proceeding" with respect to the bankruptcy action, and therefore he was not required to obtain leave of the bankruptcy court before filing the defamation action.

Loveridge and Swisher reject Hale's argument, and claim that the district court properly dismissed Hale's complaint because they were acting in their official capacity and under authorization from the bankruptcy court when the alleged defamation occurred.

BOISE, MONDAY, APRIL 7, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	**Docket No. 25688**
	)	
EDWARD JOHN STEVENS,	)	
	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Daniel T. Eismann, District Judge.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Appellant Edward Stevens appeals from his conviction of first degree murder and the denial of his motion for new trial.

Eleven month old Casey Whiteside died on December 27, 1996, from a fatal head injury. Stevens, Casey's mother's boyfriend, was caring for him at the time Casey sustained the head injury. Stevens was charged with murder in the first degree, I.C. § 18-4001, for killing Casey during the course of committing aggravated battery. Stevens' first trial resulted in a mistrial after the jury could not return a verdict. The jury in Stevens' second trial found him guilty. At that trial, both the State and the defense presented expert witnesses to support their theories of the case. Stevens argued that while he was sleeping Casey fell down a flight of stairs and that fall caused his injuries. The State argued that Stevens smashed Casey's head into the side of a bathtub causing the fatal injuries. One of the State's experts, Saami Shaibani, used a videotape of computer generated objects falling down stairs to illustrate his testimony that Casey could not have received his injuries from such a fall. The district court allowed the introduction of this video over Stevens' objection. Additionally, evidence was admitted that macular folding in Casey's eyes suggested he was subject to violent shaking. Finally, evidence was presented that at the time of his death, Casey was taking both Propulsid and Zithromax.

After his conviction, Stevens appealed to this Court. However, prior to oral argument Stevens moved for a new trial based on newly discovered evidence that the drugs Casey was taking at the time of his death could have caused cardiac arrest and could explain why he fell down the stairs, that Shaibani lied about his credentials, and that Casey's eyes were removed after he was embalmed. Stevens' appeal was suspended pending the district court's decision on that motion. The district court denied Stevens' motion for a new trial.

Stevens raises three issues on appeal. First, whether the district court erred in admitting the videotape as illustrative of Shaibani's testimony. Second, whether the district court abused its discretion by sentencing him to a fixed term of life, and third, whether the district court erred in denying his motion for a new trial.

BOISE, WEDNESDAY, APRIL 9, 2008 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

MIKE LETTUNICH, in his capacity as general partner and limited partner of Lettunich & Sons Limited Partnership,	)	
Plaintiff-Respondent,	)	
v.	)	**Docket No. 33612**
EDWARD LETTUNICH, in his capacity as general partner and limited partner of Lettunich & Sons Limited Partnership,	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Third Judicial District, State of Idaho, Payette County. Hon. Dennis E. Goff, District Judge.

White Peterson, P.A., Nampa, for appellant.

Hawley, Troxell, Ennis & Hawley, Boise, for respondent.

Appellant Edward Lettunich (Edward) and Respondent Mike Lettunich (Mike) were partners of Lettunich & Sons Limited Partnership (the Partnership). In 1999, Mike filed an application to dissolve the Partnership. After mediation, the parties entered into a "Stipulation of Compromise and Settlement Agreement" (the Agreement) which contained terms for winding up and terminating the Partnership. The district court held several hearings in order to enforce the Agreement; it resolved all the issues concerning the winding up of the Partnership and pursuant to the Agreement awarded Mike attorney fees.

Edward appealed that decision and in *Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005), this Court affirmed in part, reversed in part, and vacated the award of attorney fees. On remand, the district court reduced a portion of the original attorney fee award and then awarded attorney fees and costs to Mike for the remand proceedings. Edward appeals arguing that the amount of attorney fees awarded is unreasonable and that the Agreement does not entitle Mike to an award of fees and costs for the remand proceedings.

BOISE, WEDNESDAY, APRIL 9, 2008 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**Docket No. 34491**
	)	
v.	)	
	)	
SARAH KATHLEEN PEARCE,	)	
	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Hon. Juneal C. Kerrick, District Judge.

Greg S. Silvey, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Sarah Kathleen Pearce appeals from her convictions for conspiracy to commit robbery, robbery, conspiracy to commit first degree kidnapping, first degree kidnapping, aggravated battery, and aiding and abetting attempted first degree murder. Pearce does not argue that the crimes never occurred, but rather, she contends that she was not the woman involved in the attack. She contends that the district court committed the following errors: (1) it erred when it failed to allow her expert witness to testify as to the inherent dangers in eyewitness identification and factors which increase error in the identification process; (2) that it was error to not instruct the jury of the dangers inherent in eyewitness identification; and (3) that her due process rights were violated when the district court failed to admit the prosecutor's closing arguments from her co-defendant's trial (*State v. Sanchez II*) where the prosecutor boasts the credibility of another co-defendant (Kenneth Wurdemann), but in Pearce's trial the prosecutor impeached Mr. Wurdemann's credibility. The court of appeals found that the district court erred in failing to allow Pearce's expert to testify, but that any error was harmless. The court of appeals found no other error in Pearce's appeal and affirmed her conviction. Pearce appeals to this Court.

Pearce's felony convictions arise out of an attack on Linda Lebrane in the early morning hours of June 15, 2000. Linda Lebrane was driving from Port Townsend, Washington to Bear Lake, Utah. Around midnight on June 14, 2000, Ms. Lebrane departed Baker City, Oregon and drove on Interstate-84 towards Boise, Idaho. Shortly after departing from Baker City, Ms. Lebrane smoked two marijuana joints. In later statements to the investigating officers, Ms. Lebrane classified herself as "loaded" from her consumption of the marijuana joints.

Sometime in the early morning hours of June 15, 2000, Ms. Lebrane's car was forced off the road by another car with four passengers. The four passengers consisted of three men and one woman. Ms. Lebrane and her vehicle were taken to a secluded farm road where she was beaten with a baseball bat and repeatedly stabbed. The four attackers set the car on fire and left the scene. Ms. Lebrane rolled herself to safety, and was rescued once the flames from the car became visible.

Ms. Lebrane, currently and at the time of the attack, wears corrective glasses and describes herself as "blind as a bat" without her corrective lenses. There is conflicting evidence as to when Ms. Lebrane lost her glasses during the attack. Originally, she told officers that her glasses were removed by the driver of her vehicle, while they were driving or shortly before they were driving. She later stated that her glasses were removed shortly before they came to a stop on the farm road. At trial, she testified that the woman removed her glasses before they left her by her car. The *America's Most Wanted* episode, which depicted the attack, showed the woman removing Ms. Lebrane's glasses while sitting against the vehicle, which mirrored Ms. Lebrane's testimony at trial, but not her early statements to police.

A detective met with Ms. Lebrane the first day she was in the hospital and composite sketches of all four were completed within 5 days after the attack. The first photo-spread was conducted in December of 2000 (six months after the attack). The second was in January of 2002 (one-year and seven months after the attack). Ms. Lebrane identified two persons, neither being Pearce, in the two photo-spreads. Repeatedly throughout the process, Ms. Lebrane requested a video lineup because she was concerned about body language and height specifically. On numerous occasions, during the photo-spreads and during her testimony at trial, she expressed concern about identifying a person without seeing their height (in comparison to her height) and without seeing their body language. Ms. Lebrane identified Pearce in her third identification, which was a video lineup, in April of 2002 (one-year and ten months after the attack).

Ms. Lebrane described the female attacker as 5'1 or shorter, Hispanic with light colored skin, red hair and freckles. The age of her attacker ranged from early twenties to twenty-five to thirty years of age. She described the female attacker as really small, skinny and good looking. Sarah Kathleen Pearce was seventeen years of age on the date of the attack. Pearce is 5'6 and weighs 130 pounds. She has red hair, brown eyes, and fair complexion. Her ethnicity is listed as white. At all times during the process, Pearce has admittedly contended that she was not the woman involved in the attack.

BOISE, WEDNESDAY, APRIL 9, 2008 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE DRIVER'S LICENSE SUSPENSION OF KYLE J. REISENAUER.	)	
KYLE J. REISENAUER,	)	
	)	**Docket No. 33678**
Petitioner-Respondent,	)	
v.	)	
STATE OF IDAHO, DEPARTMENT OF TRANSPORTATION,	)	
Respondent-Appellant.	)	

Appeal from the District Court of the Second Judicial District of the State of Idaho, Latah County. Hon. John R. Stegner, District Judge.

Edwin L. Littenecker, Special Deputy Attorney General, Lewiston, for appellant.

Patrick D Costello, Moscow, for respondent.

Kyle J. Reisenauer was pulled over for failing to obey a traffic signal in Moscow. During the stop, Officer Dustin Blaker smelled marijuana and noted Reisenauer's red eyes. Reisenauer was placed under arrest and eventually suffered the suspension of his driving privileges due to allegedly positive drug test results. Reisenauer challenges his suspension on the ground that Carboxy-THC, the substance for which he tested positive, is not a substance that causes a physiological effect, and therefore does not fall within the ambit of I.C. § 18-8004(1)(a).